

Before the  
Federal Communications Commission  
Washington, D.C.

FEB 10 2003

COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

2002 Biennial Regulatory Review – Review of the	) MB Docket No. 02-277
Commission's Broadcast Ownership Rules	)
	)
Cross-Ownership of Broadcast Stations and Newspapers	) MM Docket No. 01-235
	)
Rules and Policies Concerning Multiple	) MM Docket No. 01-317
Ownership of Radio Broadcast Stations in Local Markets	)
	)
Definition of Radio Markets	) MM Docket No. 00-244

**To:** The Secretary  
Federal Communications Commission

### ERRATUM

By the Coalition for Program Diversity

This Erratum pertains to the Reply Comments of the Coalition for Program Diversity filed at the Commission on February 3, 2003 and substitutes:

- (1) The attached page 4 for page 4.
- (2) The attached page 14 for page 14.
- (3) The attached page 2 of the Appendix for page 2 of the Appendix.

Should you have any questions, please contact the undersigned.

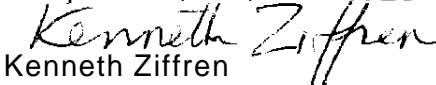
COALITION FOR PROGRAM DIVERSITY



Michael R. Gardner

The Law Offices of Michael R. Gardner, P.C.

Telephone: (202) 785-2828



Kenneth Ziffren

Ziffren, Brittenham, Branca, Fischer, Gilbert-Lurie & Stiffelman

No. of Copies rec'd 014  
List # 014

February 10, 2003

owned 46.5 hours of diverse prime time programming on the networks' weekly prime time schedule just ten years ago,' owned only 17 hours of the networks' weekly prime time schedule at the beginning of the current (2002 - 2003) broadcast season.'

- (3) In 1992, 66.4% of the networks' prime time schedule consisted of diverse programs – including dramas, sitcoms, news programs, sports, action dramas, movies of the week – produced and owned by independent producers.' Today only 24% of the network's collective prime time schedule is produced by independent producers.'
- (4) Today, only six independent producers had their series programming aired in 2002 on the networks' prime time schedules.' By contrast, in 1985, 26 independent producers programmed most of the networks' prime time schedules – diverse schedules that included sitcoms, dramas and movies of the week.'

---

<sup>4</sup> See Appendix at 9 (CPD Study, *1992-1993 Network Primetime Program Ownership (Excludes Theatricals/MOWs)*, Jan. 28, 2003 (information compiled from THE HOLLYWOOD REPORTER, Primetime Network Schedule 1992-1993: Guide to the 1992-1993 Television Season (Sept. 1992)).

<sup>5</sup> See Appendix at 19 (CPD Study, *2002-2003 Network Primetime Program Ownership (Excludes Theatricals/MOWs)*, Jan. 28, 2003 (information compiled from THE HOLLYWOOD REPORTER, Primetime Network Schedule 2002-2003: Guide to the 2002-2003 Television Season (Oct. 2002)).

<sup>6</sup> See Appendix at 9.

<sup>7</sup> See Appendix at 6 (CPD Study, *2002-2003 TV Season Network Primetime Program Ownership (ABC, CBS, Fox, NBC)*, Jan. 28, 2003 (information compiled from THE HOLLYWOOD REPORTER, Primetime Network Schedule 2002-2003: Guide to the 2002-2003 Television Season (Oct. 2002)).

<sup>8</sup> See Appendix at 2 (CPD Study, *Network Primetime INDEPENDENT TELEVISION PRODUCERS*, Jan. 28, 2003 (information compiled from THE HOLLYWOOD REPORTER, Primetime Network Schedule 2002-2003: Guide to the 2002-2003 Television Season (Oct. 2002); THE HOLLYWOOD REPORTER, Primetime Network Schedule 1992-1993: Guide to the 1992-1993 Television Season (Sept. 1992); THE HOLLYWOOD REPORTER, 1990-1991 TV Preview (Sept. 1990); TV Guide @ 50, 1985 Primetime Lineup available at <http://www.tvguide.com/50th/timecapsule/whatwason/1985/asp> (last visited Feb. 3, 2003)).

<sup>9</sup> See id.

Moreover, Turner II reaffirmed the Court's 1994 holding, explicitly stating, "We have been most explicit in holding that "protecting noncable households from loss of regular television broadcasting service due to competition from cable systems" is an important federal interest." ... Despite the growing importance of cable television and alternative technologies, "broadcasting is demonstrably a principal source of information and entertainment for a great part of the Nation's population." . . . We have identified a corresponding 'governmental purpose of the highest order' in ensuring public access to 'a multiplicity of information sources.'""

The Court's ruling in United States v. O'Brien is also relevant to the sustainability of the 25% Independent Producer Rule.<sup>35</sup> As noted in Turner, the O'Brien Court explicitly sanctions the Commission's efforts "promoting the widespread dissemination of information from a multiplicity of sources."<sup>36</sup>

The Schurz Court, the Turner Court and the O'Brien Court provide the Commission ample judicial support for the sustainability of a content-neutral independent producer carve out to promote its goal of diversity of program sources.

When considering the 25% Independent Producer Rule, the Commission should recall the insightful words of Judge Posner when he stated that, "reruns are the antithesis of diversity." Unfortunately, the Judge was prescient as reruns (or repurposing) of lowest budget network owned programming may become the sad hallmark of today's unregulated network prime time television

---

<sup>32</sup> Id. at 190 (citing Turner I, 512 U.S. at 663) (quoting Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 714 (1984)).

<sup>33</sup> Id. (quoting Turner I, 512 U.S. at 663) (quoting United States v. Southwestern Cable Co., 392 U.S. 157, 177 (1968)).

<sup>34</sup> Id. (quoting Turner I, 512 U.S. at 663).

<sup>35</sup> See United States v. O'Brien, 391 U.S. 367 (1968).

<sup>36</sup> See Turner II, 520 U.S. at 189-190.

<sup>37</sup> Schurz, 982 F.2d at 1055.

# Network Primetime INDEPENDENT TELEVISION PRODUCERS

1985  
Aaron Spelling Productions  
Bloodworth-Thomason/Mozark Productions  
Carsey-Werner Co.  
Carson Productions Group  
Columbia Pictures TV  
David Gerber Productions  
Dick Clark Productions  
Douglas S Cramer Company  
Embassy Television  
Lorimar Television  
Michael Landon Productions  
Mort Lachman & Associates Prods  
MTM Enterprises Inc  
Orion Television Entertainment  
Paramount TV  
Reeves Entertainment Productions  
Ruby/Spears Productions  
Stephen J. Cannell Productions  
TAT Communications Company  
Touchstone Television  
TriStar TV  
Universal  
Viacom Productions  
Warner Bros.  
Witt/Thomas/Harris Productions

1990  
Aaron Spelling Productions  
Barbour/Langley Productions  
Carsey-Werner  
Columbia Pictures TV  
Cosgrove-Meurer  
Lorimar Television  
Lynch/Frost  
MGM/UA  
MTM Enterprises Inc  
New World  
Orion Television  
Paramount TV  
Reeves Entertainment  
Rosenzweig Productions  
Stephen J. Cannell Productions  
Steven Bochco Productions  
Touchstone Television  
TriStar TV  
Universal  
Viacom Productions  
Vin DiBona Productions  
Warner Bros.  
Witt/Thomas/Harris Productions

1992  
Aaron Spelling Productions  
Carsey-Werner  
Castle Rock  
Columbia Pictures TV  
Cosgrove-Murer  
HBO Independent  
Hearst  
Lorimar Television  
Lucasfilm  
MGM/UA  
Mozark Productions  
New World (Four Star Holdings)  
Paramount TV  
Reeves Entertainment  
Shukovsky/English  
Stephen J. Cannell Productions  
Steven Bochco Productions  
Touchstone Television  
TriStar TV  
Universal  
Viacom Prods.  
Warner Bros.

2002  
Carsey-Werner-Mandabach  
Hallmark  
Sony Pictures Television  
Steven Bochco Productions  
Universal  
Warner Bros.